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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,903	12/06/2001	Robert Sixto JR.	SYN-039C	6145

7590

02/09/2004

Gordon & Jacobson, P.C.
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EXAMINER

WOO, JULIAN W

ART UNIT PAPER NUMBER

3731

DATE MAILED: 02/09/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,903

Applicant(s)

SIXTO ET AL.

Examiner

Julian W. Woo

Art Unit

3731

[Signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/23/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8, 11, 13, 14, 16, 17, 19, 20 and 23 is/are rejected.
- 7) ☒ Claim(s) 3, 9, 10, 12, 15, 18, 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-8, 11, 13, 16, 17, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Reztzov et al. (5,769,857). Resztzov et al. disclose, in the figures, a surgical clip applier with an outer tubular member (8), a clip-advancing element (6), a jaw mount (15), first and second jaws (2, 3) each with a recessed clip guide (4), a control element (16), a handle assembly (at 13), a clip chamber (18) enclosed by the tubular member and the jaw mount (see also col. 4, line 31-35), and a plurality of U-shaped clips (19); where the first jaw includes a first clamping surface and a curved distal anvil (5) with first and second lateral sides (108) and the second jaw includes a first clamping surface and a pair of anvil guides (109) laterally offset relative to the distal anvil, and where the clamping surfaces each include two surfaces separated by a clip guide.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reztov et al. in view of Oz et al. (6,269,819). Reztov et al. disclose the invention substantially as claimed, but do not disclose clamping surfaces with a plurality of teeth. Oz et al. teach, in figures 2-4, a clip applier with clamping surfaces having a plurality of teeth. It would have been obvious to one having ordinary skill in the art at the time invention was made, in view of Oz et al., to include teeth on the clamping surfaces of the apparatus of Reztov et al. Such teeth would allow the apparatus of Reztov et al. to grip tissue more firmly.

Allowable Subject Matter

5. Claims 3, 9, 10, 12, 15, 18, 21, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a surgical clip applier with, inter alia, an outer tubular member, first and second jaws with respective first and second clamping surfaces, and a plurality of clips, where the first jaw has a

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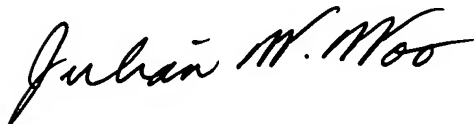
curved or bent distal anvil, where at least one of the jaws is rotatable relative to the other jaw, where the second jaw includes a well recessed relative to a surface of a clip guide in the jaw and located distal of the clip guide; where the plurality of clips are coupled in a manner such that when a proximally located clip is retracted, the proximally located clip pulls a distally located clip backwards; and where the clamping surfaces include a plurality of proximally directed teeth.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.



Julian W. Woo
Primary Examiner

February 3, 2004